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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,197	04/20/2001	David W. Cannell	05725.0505-00	1548

22852 7590 08/06/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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1300 I STREET, NW
WASHINGTON, DC 20005

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

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DATE MAILED: 08/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-10

Office Action Summary	Application No. 09/838,197	Applicant(s) CANNELL ET AL.	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-160 is/are pending in the application.
- 4a) Of the above claim(s) 75-156, 159 and 160 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-74, 157 and 158 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the reply filed on June 02,2003.

2 Claims 1-5, 9-15, 17-24, 26-32, 34-40, 44-50, 52-59, 61-67, 69-73 and 157-158 stand rejected under 35 U.S.C. 102(b) as being anticipated by Kolc et al. (US 5,223,252), for the reasons set forth in the office action in paper No. 8, dated on 2/06/2003.

3 Claims 6-8, 25, 33, 41-43, 51,60, 68 and 74 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kolc et al. (US 5,223,252) in view of Mougin et al. (US 5,753,215), for the reasons set forth in the office action in paper No. 8, dated on 2/06/2003.

Response to Applicant's Arguments

4 Applicant's arguments filed 6/02/2003 have been fully considered but they are not persuasive.

With respect to the rejection based upon Kolc (US' 252), Applicant argues that the reference of Kolc teaches a wide variety of possible compositions, and one would have to pick and choose from a variety of bases to arrive at the hydroxide-containing ingredient and thus, one of ordinary skill in the art would have to use hindsight to arrive at the claimed composition because Kolc does not provide specific guidance for the claimed invention. Also the applicant argues that Kolc teaches a permanent wave composition, and one of ordinary skill in the art would readily recognize that Kolc's formulation would not have a sufficient pH to achieve lanthionization. The applicant further, argues that Kolc fails to teach the benefit of a pretreatment composition capable of increasing the tensile strength of keratin fibers as claimed in claim 36.

The examiner respectfully, disagrees with the above arguments because Kolc teaches a composition for permanent waving or reshaping human hair. The composition comprises at least

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one organic nucleophile of cysteine free base in the amount of 2.00% and a compound of ammonium hydroxide as a hydroxide ion generator as claimed (see col. 9, composition 3). The reference further teaches the pretreatment composition by contacting the hair with an aqueous reducing agent containing composition consisting of cysteine free base as claimed in claim 36 (see col. 12, claim 16), and, hence Kolc anticipates the claims.

With respect to the rejection based upon Kolc (US' 252) in view of Mougin (US' 215), Applicant argues that Kolc teaches a cysteine-based composition wherein cysteine is nonessential amino acids derived from cystine and Mougin teaches exemplary diamines such as lysine, arginine or cystine and therefore, the teachings of the references cannot be combined. The applicant also argues that Mougin teaches the use of diamines or polyanlent metal salts as neutralizing agents to neutralize the film-forming polymer and, therefore, the combination of Kole and Mougin is improper.

The examiner respectfully, disagrees with the above arguments because both references are in the same art of hair cosmetic compositions that used for waving or reshaping the hair as taught by Kolc (see abstract) and also used for styling or shaping hair as taught by Mougin (see abstract) wherein the compositions comprise similar ingredients such as organic nucleophiles of lysine, arginine and cystine [3,3'-dithobis(2-aminopropanoic acid)] and sodium hydroxide and potassium hydroxide as a hydroxide ion generator as taught by Mougin (see col. 4, lines 26-35) and cysteine (α -amino- β -thiolpropionic acid) and a metal hydroxide as a hydroxide ion generator as taught by Kolc (see col. 4, lines 35-40 and col. 5, lines 65-66), and, thus, the prima facie case of obviousness has been established.

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5 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

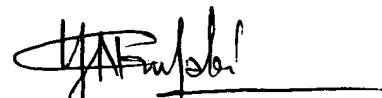
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Elhilo
July 29, 2003



YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700